

Суда по правам человека», что официально признается источником права для судов Украины.

С целью возобновления нарушенных прав пациента предусматривается выплаты на возмещения и дополнительные меры индивидуального характера (ст. 1 вышеупомянутого Закона). Такое возобновление прав возможно путем повторного рассмотрения дела административным органом или судом, включая возобновления производства по делу в суде. На сегодняшний день, в гражданском судопроизводстве – это возможность пациента, после признания судебного решения таким, которое нарушает международные обязательства Украины, обратиться в Верховный суд Украины для пересмотра дела в связи с исключительными обстоятельствами (ст. 353, 354 ГПКУ).

В УУПКУ необходимо учесть возможность выполнения решений Европейского суда через процедуру пересмотра судебных решений по уголовным делам.

Сегодня среди проблем, которые касаются практического применения защиты прав пациентов через Европейский суд, основными являются проблема выполнения его решений на территории Украины и проблема низкого уровня правосознания граждан в отношении возможности защиты своих прав через обращение в международные учреждения, в т. ч. и в Европейский по правам человека.

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LEGAL REGULATION OF «CARTEL» IN EUROPEAN UNION

The given thesis report is devoted to research of legal regulation of cartel in European Union. The aim is to discover understanding of «cartel» through mechanism of legal regulation.

Cartels, price fixing particularly, are very harmful for international economy. It raises prices and limits delivers, by this way it makes products and services almost unavailable for some buyers and overpriced for others. The most international cartels try to avoid their operation in developed countries and target developing countries instead where competition law enforcement is not vigorous or where there are no

trust acts. A cartel is a kind of anti competitive agreement and is formal among competing firms.

On impact level cartels are classified on local, national and international cartels. Presence of local and national cartels depend on national legislation and can be either supported for national economy development neither prohibited nor destroy national economy and are regulated by national acts. But generally there is also international regulation of cartels. And if a company wants to be not only within borders of national mark and tries to have its impact on international level it should be regulated by international legislation.

And in case with countries of European Union, their competition is under rules of the Treaty of Lisbon [1] that prohibits anti-competitive agreements in Article 101(1) including price fixing. According to Article 101(2) any such agreements are automatically void. Article 101(3) establishes exemptions, if the collusion is for distributional or technological innovation, gives consumers a «fair share» of the benefit and does not include unreasonable restraints that risk eliminating competition. Article 102 prohibits the abuse of dominant position, such as price discrimination and exclusive dealing. The general test is whether a concentration (i. e. merger or acquisition) with a community dimension (i. e. affects a number of EU member states) might significantly impede effective competition. Articles 106 and 107 provide that member state's right to deliver public services may not be obstructed, but that otherwise public enterprises must adhere to the same competition principles as companies. Article 107 lays down a general rule that the state may not aid or subsidize private parties in distortion of free competition and provides exemptions for charities, regional development objectives and in the event of a natural disaster.

Actions against cartels are a kind of antitrust enforcement. Cartel is a group of identity independent companies joined with aim of fixing prices, restricting deliveries, rising prices and sharing markets and clients among themselves. Cartel behavior between competitors is the most serious form of anti-competitive behavior under Chapter I or Article 101 of the Treaty on the Functioning of the European Union and carries the highest penalties. Fines are a crucial tool for competition authorities. Only if the fines (and more generally the costs that firms incur when found guilty of antitrust infringement) are large enough will the firms be deterred from engaging in cartels and other anticompetitive behavior. Under EC competition law, there are no criminal penalties, and private

actions are very rare, but fines can be very large; up to 10 % of the annual aggregate worldwide turnover of the group [2].

Instead of competing with each other cartel's members establish general concern actions that reduce incentive to present new or better products and services at competitive prices. As a result, their clients (consumers or other enterprises) pay more for a less quality. That is why cartels are illegal in accordance to Treaty on the Functioning of the European Union and why European Commission imposes big fines on companies taking part in cartel. As far as cartels are illegal they have a secret character and evidence of their existence is hard to find. The «leniency policy» motivates companies disclose proof of cartel's existence. The first company in any cartels is not have to pay fines. And it will bring to cartel's destabilization. The last years the most companies were revealed by European Commission after one member of cartel avowed and asked for leniency, though European Commission also successfully continues to conduct its own investigations for cartel's disclosing. Since 2008 companies discovered by the Commission has been involved in a cartel can settle their affairs by recognizing their participation in the cartel and get less penalty in reply. In a cartel agreement, producers explicitly agree to cooperate in setting prices and output levels for mutual advantage. By consolidating and limiting production, producers can push the market price up and earn higher profits. Cartels act in this way similar to a monopoly, and to the extent that a cartel can gain monopoly power (possible especially when demand for the good is inelastic), the cartel can raise prices above equilibrium levels [3].

Cartel is formed when two or more competing firms agree to work together to profit from the following actions:

- fixing prices (agreed selling or buying prices (this does not necessarily mean that prices are set at the same level by all parties to the agreement); agreed minimum prices; an agreed formula for pricing or discounting goods and services; agreed rebates, allowances or credit terms. Such agreements may be in writing but are often informal and verbal);

- market sharing – allocating customers, suppliers or territories to remove companies (allocating customers by geographic area; dividing contracts by value within an area; agreeing not to compete for established customers; agreeing not to produce each other's products or services; agreeing not to expand into a competitor's market);

rigging bids (cartel members can rotate winning jobs at inflated rates; participants in a bid rigging cartel may take turns to be the 'winner' by agreeing about the way they submit tenders, including some competitors agreeing not to tender);

controlling the output or limiting the amount of goods and services available to buyers (so buyers have no choice but to pay higher prices).

Understanding of cartel's issues in a today's economic development can bring to decision that it is time for modernization of anti cartel legislation that helps to uncover most of cartels through leniency program and broader legal liability except imposing fines.

Literature:

1. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed 13, December, 2007, Lisbon

2. Massimo Motta (n. d/2006) On the Effect of EU Cartel Investigations and Fines On the Infringing Firms' Market Value [WWW document]. URL http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume86n3/documents/BONEv2_000.pdf, p. 1/13;

3. Collin Fitzsimmons What Is a Cartel Agreement? [WWW document]. URL http://www.ehow.com/about_5271061_cartel-agreement.html.

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THE EU EXTERNAL ACTIONS OF COOPERATION: THE LEGAL AND ECONOMICAL ASPECT OF ENP

According to the Article 22(1) TEU [1], the leadership in the direction of foreign policy rests with the European Council, whose task is to «identify the strategic interests and objectives of the Union». The European Council acts on the basis of unanimity based on recommendation by the Council of Ministers, who in turn may receive proposals from the High Representative of the Union (for matters relating to CFSP) and from the Commission for other policy fields. The impact of these decisions will be set out the policy framework for the European Union's external relations with various countries or regions. The Article 21(1) TEU gives the tools, how to influence on third's countries development can be exercised. It includes: